

123 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MidAmerican Energy Company

Docket No. OA07-56-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued April 3, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),¹ MidAmerican Energy Company (MidAmerican) submitted its compliance filing as required by Order No. 890 (July 13 Filing).² In this order, we accept MidAmerican's filing, as modified, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights, and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved

¹ 16 U.S.C. § 824e (2000 & Supp. V 2005).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance filings that conform to the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

4. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM) set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.⁴

II. Compliance Filing

5. MidAmerican submitted revised tariff sheets to conform to the Order No. 890 *pro forma* OATT and other provisions of Order No. 890. MidAmerican states that its filing comports with the Order No. 890 *pro forma* OATT and specifically addresses the following tariff provisions: (1) simultaneous submission window; (2) clustering of studies; (3) unreserved use penalties; (4) distribution of penalty revenues; (5) effective dates for imbalance provisions; (6) rollover standards; (7) revisions to the form of service agreement; and (8) removing the Index of Customers from Attachment E of its OATT and reorganizing the attachments to its OATT to maintain consistency with the Order No. 890 *pro forma* OATT. MidAmerican also states that its filing incorporates the variances that it proposed and that were accepted by the Commission in Docket No. OA07-12-000, *et al.*⁵

III. Notice of Filing and Responsive Pleadings

6. Notice of MidAmerican's filing was published in the *Federal Register*, 72 Fed. Reg. 41,727 (2007), with interventions and protests due on or before August 3, 2007. Motions to intervene and protests were filed by Municipal Energy Association of

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

⁵ *MidAmerican Energy Company*, Docket Nos. OA07-12-000, 001, and 002 (July 11, 2007) (unpublished letter order)

Nebraska (MEAN) and Midwest Municipal Transmission Group (MMTG). MMTG's protest incorporated by reference MEAN's protest. MidAmerican filed an answer to MEAN's protest and MEAN filed a reply to MidAmerican's answer.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept MidAmerican's answer and MEAN's reply because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

9. As discussed below, we will accept MidAmerican's compliance filing, as modified, to be effective July 13, 2007. We also direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing as discussed below.

1. Simultaneous Submission Window

a. MidAmerican's Proposal

10. MidAmerican proposes to adopt, in a new section 2.3 (Simultaneous Submission Window) of its OATT, a five-minute window in which any transmission service request made in the first five minutes after the transmission reservation period opens will be deemed to have been submitted simultaneously.

11. MidAmerican states that its independent transmission service coordinator, TranServ International, Inc. (TranServ), has a posted guideline that sets "no earlier than" deadlines for non-firm point-to-point transmission service, daily and weekly firm point-to-point transmission service, and designation of a network resource for a daily or weekly basis. MidAmerican states that TranServ's business guideline on MidAmerican's OASIS explains how available transfer/flowgate capability will be allocated if there is insufficient capability to meet all the simultaneously submitted requests. MidAmerican also requests clarification as to whether the Commission requires that the "no earlier than" deadline for requests being received simultaneously apply only to firm service.

b. Responsive Pleadings

12. MEAN states in its protest that MidAmerican should be required to clarify the proposed business practices provisions posted on its OASIS to show how limited Available Transfer Capability (ATC) will be allocated among competing requests. MEAN also states that the business practices showing how the limited ATC will be allocated should be filed as part of MidAmerican's OATT.

13. MidAmerican asserts in its answer that MEAN's protest suggests that MidAmerican is not implementing the requirements for the simultaneous submission window in an unbiased manner. MidAmerican argues that such claims are unfounded. MidAmerican clarifies that, TranServ, the independent transmission service coordinator, approved to administer MidAmerican's OATT,⁶ developed and administers the simultaneous submission window processing business guideline posted on MidAmerican's OASIS. These guidelines, MidAmerican argues, are consistent with the tariff services provided pursuant to its OATT.⁷

14. MidAmerican disagrees with MEAN's position that the procedures for allocating service among transmission service requests submitted simultaneously within the five-minute window should be included in the OATT. MidAmerican asserts that while the time period that establishes simultaneity must be included in the OATT, Order No. 890 does not specify that the procedures for allocating transmission service among competing requests within that period must be included in the OATT.

15. MidAmerican argues that placing the methodology in TranServ's business practices allows for greater flexibility within the framework of TranServ's stakeholder process, rather than requiring multiple revisions to the OATT as more experience is gained and modifications are made.⁸

c. Commission Determination

16. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a "no earlier than" time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously.⁹ Although the Commission left it to the

⁶ See *MidAmerican Energy*, 115 FERC ¶ 61,326 (2006).

⁷ MidAmerican Answer at 2.

⁸ *Id.* at 3-4.

⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1418-22.

transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also directed each transmission provider that has a simultaneous submission window to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.¹⁰

17. We find that MidAmerican's proposed new section 2.3 of its OATT complies with Order No. 890 in so far as it specifies a simultaneous submission window of at least five minutes for those services for which a "no earlier than" time limit for transmission service requests applies. However, we agree with MEAN that the business practices setting forth how ATC will be allocated if sufficient capacity is not available to meet all requests made within the time period must be filed, as part of MidAmerican's OATT, with the Commission. As the Commission explained in Order No. 890-A, each transmission provider must clearly define and support its allocation methodology in its tariff.¹¹ Accordingly, we will require MidAmerican to modify its OATT to incorporate these business practices into its OATT.

18. We will also grant MidAmerican's request and clarify that Order No. 890 requires the "no earlier than" deadline for transmission service requests being received simultaneously only for firm transmission service requests. Order No. 890-A clarified that the requirement to establish a simultaneous submission window applies only where a "no earlier than" time has been adopted for the submission of requests for firm service.¹²

2. Clustering of Studies

a. MidAmerican's Proposal

19. MidAmerican states that the proposed clustering revisions contained in section 19.2 (System Impact Study Agreement and Cost Reimbursement), part (iii), and section 32.2 (System Impact Study Agreement and Cost Reimbursement), part (iii), of its OATT were provided by its independent transmission coordinator, TranServ. According to MidAmerican, TranServ performs system impact studies and any clustering of studies. MidAmerican states that the proposed tariff language in section 19.2(iii) and section 32.2(iii) states that an eligible customer will be offered the option to cluster the customer's own requests for service that have equivalent points of receipt and points of

¹⁰ *Id.* P 1370-71.

¹¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 806.

¹² *Id.* n.303.

delivery to be studied in a single system impact study. According to MidAmerican, the system impact study will evaluate the clustered requests in queue order.¹³

b. Responsive Pleadings

20. MEAN asserts that MidAmerican's clustering provisions are too narrow. According to MEAN, a single customer seeking to evaluate, for example, power supply options coming from various points of receipt to a single point of delivery, should be able to request a cluster study in order to analyze the relative transmission feasibility of the various options. MEAN also states that MidAmerican's clustering proposal fails to address the transmission service requests of multiple customers. MEAN maintains that if a group of customers agree to a clustered system impact study, they should have that option. For example, MEAN asserts this option should be available to a group of owners of a generating unit who agree to have their transmission service requests for delivery of the unit's output to their respective loads studied together.¹⁴ MEAN requests that the Commission direct MidAmerican to clarify that clustering of studies that involve multiple customers and different points of receipt and delivery are not precluded under its proposal.

21. In its answer, MidAmerican states that TranServ reviewed MEAN's request to expand its clustering provisions and has decided to expand its clustering options. MidAmerican states that if the Commission agrees with the proposed revisions to its clustering provisions, it will amend sections 19.2(iii) and 32.2(iii) of its OATT to include the following language:

Prior to executing the System Impact Study Agreement, an Eligible Customer will be offered by the Transmission Service Coordinator, if it can be accommodated, the option to cluster its own requests for service to be studied as a single System Impact Study that have: (1) the equivalent Point of Receipt and Point of Delivery, (2) are to a single Point of Delivery, (3) are from a single Point of Receipt, or (4) service requests that can be logically clustered into a single study. In addition, Eligible Customers that are joint owners of a generating unit who agree to cluster all of the Eligible Customers' requests for service have the option to cluster

¹³ MidAmerican Transmittal Letter at 5-6.

¹⁴ MEAN Protest at 5.

requests for service to multiple Points of Delivery. [¹⁵]

c. Commission Determination

22. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.¹⁶

23. We find that MidAmerican's clustering language, as modified by its answer, does not adequately respond to MEAN's concern that MidAmerican's clustering proposal fails to address transmission requests of multiple customers. As noted above, Order No. 890 requires transmission providers to consider clustering if the customers involved request the cluster and transmission providers can reasonably accommodate the request. We also find that MidAmerican did not adequately describe how it will structure transmission customers' obligations when they have joined a cluster, as required by Order No. 890. As part of those obligations, MidAmerican must describe how it will allocate study costs among transmission customers that have joined a cluster. Therefore, we direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing to: (1) include a description of how it will structure transmission customers' obligations when they have joined a cluster; and (2) address how it will consider requests by multiple customers to have their individual studies clustered.

3. Unreserved Use Penalties

a. MidAmerican's Proposal

24. MidAmerican states that it has updated its penalty provisions in accordance with Order No. 890. Specifically, it states that it has added a section 5 (Penalties) to its Attachment H (Annual Transmission Revenue Requirement for Network Integration Transmission Service) as provided in sections 28.6 (Restrictions on Use of Service) and 30.4 (Operation of Network Resources), whereby the network customer may not schedule delivery of energy in excess of the network resource's capacity. New section 5 states, in

¹⁵ MidAmerican Answer at 6-7.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

part, that the transmission provider specifies the rate treatment of Schedule 7 (Firm Point-to-Point Transmission Service), section 6 (Exceeded Reservations) and all related terms and conditions applicable in the event that a network customer's schedule at the delivery point for a network resource not physically interconnected with the transmission provider's transmission system exceeds the network resource's designated capacity, excluding energy delivered using secondary service or point-to-point service.¹⁷ Furthermore, Schedule 7, section 6 of MidAmerican's OATT has been modified to state that:

In the event the transmission customer exceeds its firm reserved capacity (excluding losses) at each point of receipt and/or each point of delivery, the transmission customer shall be charged 150 percent of the transmission provider's approved transmission service rate for the type of point-to-point transmission service provided under Schedule 7. The unreserved use penalty for a single hour of unreserved use will be based on the rate for daily firm point-to-point service. More than one assessment for a given duration (e.g., daily) will increase the penalty period to the next longest duration (e.g., weekly). The unreserved penalty charge for multiple instances of unreserved use (i.e., more than one hour) within a day will be based on the rate for daily firm point-to-point service. The unreserved use penalty charge for multiple instances of unreserved use during more than one week during a calendar month will be based on the charge for monthly firm point-to-point.

b. Responsive Pleadings

25. MEAN states that MidAmerican proposes to modify Attachment H of its OATT to provide penalties for two varieties of abuse of network service: (1) exceeding the designated capacity of an off-system network resource (under section 30.4), and (2) improper use of a network resource or secondary service to make third-party sales (under section 28.6).¹⁸ However, MEAN points out that MidAmerican only specifies the penalty for exceeding the designated capacity of an off-system network resource in Attachment H, and fails to specify the penalty for improper use of a network resource or secondary service to make third-party sales. MEAN requests that the Commission direct

¹⁷ MidAmerican OATT, Attachment H, section 5.

¹⁸ MEAN Protest at 6.

MidAmerican to clarify that the proposed penalty also applies to improper use of a network resource or secondary service to support third-party sales.¹⁹

26. In its answer, MidAmerican clarifies that the exceeded reservations provisions of Schedule 7, referenced in Attachment H, section 5 of its OATT, will also apply to any transmission penalty charges associated with a network customer's use of the transmission system to facilitate a third-party sale.²⁰

c. Commission Determination

27. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its tariff.²¹ We will accept MidAmerican's revised Attachment H, as modified in its answer, as responsive to MEAN's concern and in compliance with Order No. 890. We direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing to amend its OATT to reflect the clarification it provided in its answer.

4. Distribution of Penalty Revenues

a. MidAmerican's Proposal

28. MidAmerican's filing contains a proposed mechanism for crediting imbalance penalty revenues.²² MidAmerican proposes to credit all non-offending transmission

¹⁹ *Id.*

²⁰ MidAmerican Answer at 7 and 8.

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

²² In Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) MidAmerican includes various levels of penalties applicable to customers who cause imbalances that exceed a minimum deviation band. Band 1 megawatts (MW) are defined as deviations over the hourly schedule of less than or equal to 1.5 percent of the schedule or 2 MWs or less, whichever is larger. Band 2 MWs are defined as deviations over the hourly schedule of greater than 1.5 percent of the schedule up to 7.5 percent of the schedule, or deviations over the hourly schedule of greater than 2 MWs and up to 10 MWs. Band 3 MWs are defined as deviations over the hourly schedule of 7.5 percent or more of the hourly schedule or deviations of 10 MWs or more over the hourly schedule.

customers²³ the revenues collected in excess of incremental costs based on actual delivered energy during the month in which the imbalance penalty was assessed. MidAmerican asserts that using actual energy deliveries to allocate penalty revenues rather than scheduled energy removes any incentive to over-schedule in order to garner a larger portion of the collected penalty revenues.

b. Responsive Pleadings

29. MEAN argues that MidAmerican's provisions for distribution of imbalance penalty revenues must be revised. MEAN also argues that these provisions should be included in the OATT so that distribution of these revenues cannot be changed unilaterally without a section 205 filing.²⁴ MEAN also requests that MidAmerican be required to broaden its definition of "non-offending customer" because MidAmerican's proposed definition would unreasonably exclude large transmission customers despite those large customers' best efforts to avoid penalties. MEAN requests that MidAmerican be directed to allow customers with excursions into Band 2 or 3 to be considered "non-offending" if those excursions are not a direct result of the customers' actions.

30. MEAN also states that MidAmerican has not included in its filing provisions for the distribution of penalty revenues other than imbalance penalties, i.e., unreserved use penalties. MEAN understands that MidAmerican interprets Order No. 890 as permitting it to include its methodology for distribution of penalty revenues in its annual compliance filings, and that MidAmerican intends to follow that course. MEAN argues that if, instead, the Commission intended that transmission providers include their proposed mechanisms with the July 13 compliance filings, the Commission should clarify its requirement and direct MidAmerican to modify its tariff accordingly.

²³ MidAmerican defines a "non-offending customer" as follows:

An eligible transmission customer whose imbalance was settled under Schedule 4 and/or Schedule 9 service with MidAmerican as the Transmission Provider based on either a service agreement or MidAmerican's OATT provisions, and whose Schedule 4 and/or Schedule 9 imbalance was entirely within Band 1 (imbalances less than or equal to 1.5 percent of scheduled energy or 2 MW or less, whichever is larger) during the month the imbalance penalties were assessed.

See Exhibit 4, Original Sheet Nos. 4 and 5 of MidAmerican's OATT.

²⁴ MEAN Protest at 7.

31. MidAmerican responds that its mechanism for crediting imbalance revenues is properly posted on its OASIS as a business practice, and that the Commission did not require transmission providers to include their crediting mechanism in their OATTs. MidAmerican objects to MEAN's proposal to broaden the definition of "non-offending" customer. According to MidAmerican, offending parties that pay penalties in Band 2 or 3 should not be eligible to receive a share of imbalance penalty revenues. MidAmerican adds that its proposed definition allows it to administer its crediting provisions on a consistent and non-discriminatory basis.

32. MidAmerican also responds that it has sought clarification from the Commission on Paragraph 861 of Order No. 890 that it is acceptable to submit the informational filing that includes the methodology for identifying and distributing unreserved use and late study penalties after the July 13 Filing.

33. MEAN clarifies in its reply that it objects to the monthly basis of MidAmerican's definition of "non-offending" and requests that MidAmerican define "non-offending" on an hourly basis. MEAN argues that the proposed monthly definition would virtually assure that the transmission provider's native load would receive all of the imbalance penalty revenues.

c. Commission Determination

34. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.

35. We reject MidAmerican's proposal to distribute energy and generation imbalance penalty revenues. As we explained in *PacifiCorp*,²⁵ we find that MidAmerican's proposal is unduly restrictive. Under MidAmerican's proposal, a transmission customer that experiences an imbalance in excess of Band 1 during one hour in the monthly period would be excluded from the pool of non-offending imbalance customers eligible to receive penalty revenues. We agree with MidAmerican's definition of "non-offending customer" with respect to deviation bands; however, we find that incurring an imbalance penalty charge for a single hour in the monthly period should not make a customer

²⁵ *PacifiCorp*, 121 FERC ¶ 61,223, at P 44-45 (2007) (accepting in part and rejecting in part PacifiCorp's Order No. 890 compliance filings).

ineligible for a share of penalty revenues for the month.²⁶ Accordingly, we direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing with a revised mechanism for the distribution of imbalance penalty revenues that defines non-offending customers on an hourly basis and only excludes offending customers from receiving penalty revenues for that hour.

36. We grant clarification that it is acceptable for MidAmerican to submit its methodology for identifying and distributing unreserved use and late study penalties in a later filing. In Order No. 890-A, the Commission explained that “[f]irst, if a transmission provider elects to impose unreserved use penalties, it must submit to the Commission a tariff filing under FPA section 205 stating the applicable unreserved use penalty rate. Second, each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider’s methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties.”²⁷ The Commission also stated that “this one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties. Transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if the Commission alters the distribution mechanism on review.”²⁸ Additionally, the Commission explained that a “transmission provider must report on its penalty assessments and distributions in an annual compliance report to be submitted on or before the deadline for submitting FERC Form-1, as established by the Commission’s Office of Enforcement each year.”²⁹

5. Correction of Dates

a. MidAmerican’s Proposal

37. MidAmerican proposes to amend section 13.3 (Use of Firm Transmission Service by the Transmission Provider), in relevant part, to provide that the transmission provider will be subject to the rate terms and conditions of Part II of its OATT when making third-party sales under agreements executed on or after July 13, 2007. Section 13.3 of MidAmerican’s OATT previously referenced agreements executed on or after July 9, 1996.

²⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

²⁷ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

²⁸ *Id.*

²⁹ *Id.*

38. MidAmerican also proposes to change section 30.9 (Network Customer Owned Facilities) to include criteria for crediting a network customer for integrated transmission facilities owned by that customer, effective July 13, 2007.

b. Responsive Pleadings

39. MEAN asserts that Order No. 890 did not authorize any changes to section 13.3 of the *pro forma* OATT and argues that the original effective date for section 13.3, which corresponds to the effective date of Order No. 888 (i.e., July 9, 1996), should be retained. It requests that the Commission direct MidAmerican to make the revision. MEAN also argues that the date for implementation of the new test to determine whether a customer is entitled to credits in section 30.9 of the Order No. 890 *pro forma* OATT should be no later than May 14, 2007, which is consistent with the effective date of Order No. 890.

40. In its answer, MidAmerican states that with regard to section 13.3, Order No. 890 is ambiguous as to the proper date to be inserted in this section. MidAmerican states that the Commission could have retained a July 9, 1996 date, but it did not. MidAmerican asserts that since the *pro forma* OATT was reissued along with Order No. 890, it interprets the required effective date to be inserted in section 13.3 to be the effective date of the Order No. 890 *pro forma* OATT. However, MidAmerican states that it has no objection to retaining the July 9, 1996 if that was the Commission's intent in Order No. 890.³⁰ With regard to section 30.9, MidAmerican states that the date referenced in its revised section 30.9 is accurate and disagrees with MEAN that it should be modified.

c. Commission Determination

41. With regard to section 13.3 of the Order No. 890 *pro forma* OATT, we note that the Commission did not authorize any changes to this section of the Order No. 888 OATT. Accordingly, we direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing to amend section 13.3 to specify the original date (i.e., July 9, 1996).

42. With regard to section 30.9 of the Order No. 890 *pro forma* OATT, the correct date is the effective date of Order No. 890, i.e., 60 days after publication of Order No. 890 in the *Federal Register* (May 14, 2007). Accordingly, we direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing to revise section 30.9 of its OATT to specify the correct date.

³⁰ MidAmerican Answer at 4-5.

6. Rollover Rights Effective Date

a. MidAmerican's Proposal

43. MidAmerican proposes to modify section 2.2 (Reservation Priority for Existing Firm Service Customers) to comply with the Order No. 890 *pro forma* tariff. MidAmerican requests that the revised section 2.2 become effective on July 13, 2007.³¹

b. Responsive Pleadings

44. MEAN argues that MidAmerican's proposed modification to section 2.2 of its OATT prematurely omits the currently effective rollover standards and inserts new standards that are not yet effective. According to MEAN, since the original rollover standards are still in effect, those provisions should continue to be reflected in section 2.2 and that MidAmerican's omission of these provisions creates a gap in its OATT.³² MEAN argues that it is not logical, necessary, or appropriate to reflect Order No. 890 *pro forma* section 2.2 changes prior to Commission approval of each transmission provider's Attachment K.

c. Commission Determination

45. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.³³

46. MidAmerican has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, MidAmerican's Attachment K, setting forth its transmission planning process, which was filed December 7, 2007, in Docket No. OA08-41-000, has not yet been accepted. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct MidAmerican to file, within 30 days of the date of this order, a revised tariff sheet that

³¹ See proposed section 2.2 of MidAmerican's OATT.

³² MEAN Protest at 9.

³³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

reflects the previous language of section 2.2. MidAmerican should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date commensurate with the date of that filing.

7. Index of Customers

47. MidAmerican proposes to remove the Index of Customers from Attachment E of its OATT and replace it with the Wholesale Electric Quadrant Standards of the North American Energy Standards Board, which had previously been included as Attachment L in MidAmerican's OATT. MidAmerican states that Attachment L will be relocated to Attachment E to allow MidAmerican to maintain consistency with the Order No. 890 *pro forma* OATT by including its Creditworthiness Procedures as Attachment L.

48. We will accept MidAmerican's administrative organizational change with regard to moving the attachments in its OATT since it merely conforms MidAmerican's existing OATT to that of the Order No. 890 *pro forma* OATT.

8. CBM

49. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the CBM set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. In its response to that compliance requirement, MidAmerican states that it sets the CBM component to zero for all MidAmerican flowgates and contract paths and thus requests waiver of the requirement to make a section 205 filing for CBM.³⁴ Accordingly, we grant waiver of the requirement to make a section 205 filing for CBM.³⁵

³⁴ In Docket No. OA07-80-000, MidAmerican sought guidance from the Commission regarding whether one particular contract path would be considered a CBM set-aside pursuant to the Final Rule. The Commission found that the emergency reserve did not constitute a CBM set-aside under the Final Rule. *See MidAmerican Energy Co.*, 120 FERC ¶ 61,292 (2007).

³⁵ We note that to the extent MidAmerican uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263. MidAmerican acknowledged this requirement in its filing.

The Commission orders:

(A) MidAmerican's compliance filing is hereby accepted, as modified, effective July 13, 2007, as discussed in the body of this order.

(B) MidAmerican is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.